

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA,**  
**Plaintiff**

**v.**

**SILVESTRE RICO BELTRAN,**  
**Defendant**

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**1:07-cr-00804-SWK**

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**MOTION FOR PRODUCTION OF WITNESSES STATEMENTS  
AND BRIEF IN SUPPORT THEREOF**

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TO THE HONORABLE JUDGE, UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK:

COMES NOW SILVESTRE RICO BELTRAN, by and through his undersigned counsel and moves this Honorable Court based on the Fifth and Sixth Amendments of the United States Constitution, Rule 26.2, Fed. R. Crim. Pro., and 18 U.S.C. § 3500, and respectfully moves the Court to order the production of witnesses statements:

**I.**

**MOTION**

The Defendant moves the Court to order the Government to produce the following requested items:

1. Any statement, whether in writing or however recorded and whether signed or unsigned, of any witness called to testify by the prosecution.
2. Any prosecution report or investigative agency report where same is shown to purport to be what the witness observed or did at the time in question and which

concerns facts testified to by the witness on direct examination, whether made by the witness or not, so long as the witness has adopted the same as being correct.

3. Any writings prepared by the prosecuting attorneys relating to the subject matter of the testimony of a government witness, and such writing being signed or otherwise adopted or approved by said witness during his testimony.

The Defendant would further request that he be given said statements, documents, charts, photographs or other requested objects, at least three (3) days prior to the person testifying in this case.

## **II.**

### **BRIEF**

18 U.S.C. § 3500 provides that in a federal criminal prosecution, after a witness called by the prosecution has testified on direct examination, the Court, on motion of the Defendant, should order the prosecuting attorneys to produce the “statement,” as defined in the act, in the possession of the government, which relates to the subject matter as to which the witness had testified. The statute provides that the definition of “statement” is as follows:

- (1) A written statement made by said witness and signed or otherwise adopted or approved by him;
- (2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital or an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or
- (3) A statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

18 U.S.C. 3500(e). See also Rule 26.2(f), Fed. R. Crim. Pro. The specific language of the statute requires production of any “statement” in the possession of the United States, without being

limited to statements made to an agent of the government. Thus, statements made to other persons not connected with the government, but in the possession of the prosecuting attorney, should be produced. Further, all statements made to the prosecuting attorney and adopted by said witness are also discoverable. See *Goldberg vs. United States*, 425 U.S. 94 (1976). Pursuant to the Jencks Act and the case of *Jencks vs. United States*, 353 U.S. 657 (1957), a defendant on trial in a criminal prosecution is entitled to relevant and competent reports and statements in the possession of the government, touching the events and activities to which a government witness has testified at trial.

WHEREFORE, the Defendant prays that the Court order production of witnesses' statements as requested herein.

Respectfully Submitted,

s/ Carlos A. Garcia  
Carlos A. Garcia  
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CERTIFICATE OF SERVICE

I, Carlos A. García, hereby certify that on Monday, July 7, 2008 a true and correct copy of the above and foregoing Motion for Production of Witnesses Statements and Brief in Support Thereof was forwarded to Brendan R. McGuire, Attorney in charge of this case, at the United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York, 10007.

/s/ Carlos A. García  
Carlos A. García

CERTIFICATE OF CONFERENCE

I, Carlos A. Garcia, hereby certify that on July 1, 2008, the undersigned counsel conferred with Brendan R. McGuire, the Assistant United States Attorney in charge of this case and he was unopposed.

/s/ Carlos A. Garcia  
Carlos A. Garcia